subordinate Councils in Virginia, and are obtaining members and fees which each would obtain but for the other, and are holding themselves out as the only true and lawful State Council of the Virginia Junior Order of United American Mechanics.

The plaintiff sued for an injunction, and the defendants, in their answer, asked cross relief. The plaintiff obtained a decree enjoining the defendant corporation and the other defendants, (declared to be shown by their answers to be its agents and representatives,) as officers of the Virginia voluntary association, from continuing within the State the use of the plaintiff's name or any other name likely to be taken for it; from using the plaintiff's seal; from carrying out under such name the objects for which the plaintiff and the Virginia voluntary association were organized; from granting charters to subordinate Councils in the State as the head of the Order in the State; from interfering in any way with the pursuit of its objects by the plaintiff within the State; and from designating their officers within the State by applications set forth as used by the plaintiff. On appeal the decree was affirmed, with a modification, merely by way of caution, providing that nothing therein contained should, in anywise, interfere with any personal or property rights that might have accrued before the date of the Virginia charter. The defendants had set up in their answer and insisted that the charter impaired the obligation of the contract existing between the plaintiff and the principal defendant, contrary to Article 1, Section 10, of the Constitution, and also violated Section 1 of the Fourteenth Amendment, and they took a writ of error from this Court.

The bill and answer state the two sides of the difference which led to the split, at length. But those details have no bearing that needs to be considered here. The only question before us is the constitutionality of the Act of the Virginia Legislature granting the charter. The elements of that question are the appropriation of the name of the previously existing voluntary society and the exclusive right of granting sub-charters in Virginia conferred by the words that we have quoted. Whether the persons who were using that name when they got themselves incorporated were using it rightly or wrongly does not matter if the Legislature had the right to grant the name to them in either case. On the other hand, we do not consider the question stated to be disposed of by the limitation put upon the decree by the Supreme Court of Appeals. Unless the saving of personal and property rights existing at the date of the charter be read as a construction of the charter, it does not affect the scope or validity of the Act. And if so read, still it cannot be taken to empty the specific prohibitions in the decree of all definite meaning and to leave only an indeterminate injunction to obey the law at the defendants' peril. That in-

junction remains, and imports what the words of the charter import, that the plaintiff has been granted certain defined exclusive rights which the Court will enforce.

The decree, however, goes beyond the rights which we have mentioned as given by the charter. In that respect the discussion here must be limited again. Whether the plaintiff is using paraphernalia, or a ritual, or a seal, which it should not be allowed to use, is not before us here. The charter says nothing about them, and its validity is not affected by any abuse of rights of property or of confidence which the plaintiff or its members may have practised. This Court, we repeat, cannot go beyond a decision upon the constitutionality of the charter granted, and we address ourselves to that.

The contract of which the obligation is alleged to have been violated is a contract between the plaintiff and the principal defendant. What that contract is supposed to have been is not stated, but manifestly there was none. It would have had to be a contract not to come into existence, at least with the plaintiff's present functions and name. There have been cases where administration was taken out on a prematurely born child and a suit brought for causing it to be born, *per quod* it died, but they have failed. *Dietrich* v. *Northampton*, 138 Mass. 14. See *Walker* v. *Great Northern Ry. Co. of Ireland*, 28 L. R. Ir. 69. An antenatal contract presents greater difficulties still. Even if we should substitute an allegation of a contract with the members of the plaintiff, the contention would fail. The contract, if any there was, was not that they would not become incorporated, but must be supposed to be that they would retain their subordination to the National Council, or something of that sort. It is going very far to say that they contracted not to secede, but whether they did so or not, it was a matter outside the purview of the charter. There was nothing in that to hinder their returning to their allegiance. Whether any, and, if any, what contract was made, (*National Council, Junior Order United American Mechanics* v. *State Council*, 64 N. J. Eq. 470, 473; 66 N. J. Eq. 429,) and whether, if made, it must not be taken to have been made subject to the powers of the State, with which we are about to deal, are questions which we may pass. See *Pennsylvania College Cases*, 13 Wall. 190, 218. *Bedford* v. *Eastern Building & Loan Association*, 181 U. S. 227.

The most serious aspect of the defence is presented by the matter of the plaintiff's name. If the legislation of a State undertook to appropriate to the use of its own creature a trade name of known commercial value, of course the argument would be very strong that an act of incorporation could not interfere with existing property rights. And no doubt within proper limits the argument would be as good for a foreign corporation as for a foreign person. But that is not what has been done in this case.

The name in question is not the name of the principal defendant, but distinguished from that name as State and National Councils no doubt generally are distinguished by members of similar institutions. It is the name of a voluntary association of which the officers are defendants. But it is not used even by that association in its own right, but only under a charter from, and in the right of, the Pennsylvania corporation. Furthermore, the name is not associated with a product of any kind. Its only value to the defendants, in a property sense, is as tending to invite membership in a club which professes to derive its existence and its powers from the Pennsylvania company. It does not seem likely that any one would join the plaintiff, and certainly no member could be retained, in ignorance of its alienation from the National Council. As the National Council has its branches elsewhere, and as the plaintiff is on its face a State organization, competition outside the State appears improbable. So that the claim of the defendants comes down to a claim of right to compete within the State, and a right, as we have said, of or in behalf of the Pennsylvania corporation, which controls the existence of its subordinate Virginia Councils. Thus the question as to the grant of the name passes over into the question as to the exclusive right of the plaintiff to issue charters which was the other legislative grant.

The Supreme Court of Appeals was right, therefore, in treating the constitutional question as depending on the power of the State with regard to foreign corporations. That must decide the case. Now it is true, of course, that an unconstitutional law no more binds foreign corporations than it binds others. *Carroll* v. *Greenwich Ins. Co.*, 199 U. S. 401, 409. And no doubt a law specially directed against a foreign corporation might be unconstitutional, for instance, as depriving it of its property without due process of law. See *Blake* v. *McClung*, 172 U. S. 239, 260. But when the so-called property consists merely in the value that there might be in extending its business or membership into a State, that property, it hardly needs to be said, depends upon the consent of the State to let the corporation come into the State. The State of Virginia had the undoubted right to exclude the Pennsylvania corporation and to forbid its constituting branches within the Virginia boundaries. As it had that right before the corporation got in, so it had the right to turn it out after it got in. *Security Mutual Life Ins. Co.* v. *Prewitt*, 202 U. S. 246. It follows that the State could impose the more limited restriction that simply forbade the granting of charters to "subordinate Councils, Junior Order United American Mechanics, in the State of Virginia."

It is argued that the power of the State in this case was less than it otherwise might have been because it did not turn the Pennsylvania corpo-

ration out. The Supreme Court of Appeals says that the plaintiff's charter leaves the whole order of things as it existed unaffected except by the exclusive right of the plaintiff to issue subordinate charters. It is said that the general statutes recognized the defendant and authorized such associations to continue within the State. A subordinate Council of the Order had been granted a special charter which is not revoked. The conclusion is drawn that the restrictions upon the defendant which flow from the charter to the plaintiff amount to a denial of the equal protection of the laws of Virginia to a person within its jurisdiction. But the power of the State as to foreign corporations does not depend upon their being outside of its jurisdiction. Those within the jurisdiction, in such sense as they ever can be said to be within it, do not acquire a right not to be turned out except by general laws. A single foreign corporation, especially one unique in character, like the National Council, might be expelled by a special act. It equally could be restricted in the more limited way.

There were many difficult questions presented to the State Court which can not be reviewed here. As to the constitutionality of the plaintiff's charter we are of opinion that the Court was right.

Decree affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.